

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

DAVID CHERRY, Personal)
Representative of the ESTATE)
OF PAMELA CHERRY, DECEASED,)
Plaintiff,)
vs.) Case No.
MACON COUNTY HOSPITAL, INC.) 2:12-cv-00043
d/b/a MACON COUNTY GENERAL)
HOSPITAL and HANNA C. ILIA,)
M.D.,)
Defendants.)

The videotaped deposition of
RICHARD M. SOBEL, M.D.
September 25 and 30, 2013
VOLUME OF I of III

LAUREL L. EILER, RDR-FAPR, LCR, CCR
Accurate Court Reporting
The Pilcher Building
144 Second Avenue North, Suite 230
Nashville, TN 37201
(615) 244-DEPO or 244-3376
www.ACR-Nashville.com

E X H I B I T S
(CONTINUED)

3

NUMBER	PAGE
79	82
5	Literature/Articles Reviewed by Dr. Sobel
6	170
7	Sample Emergency Physician Record Chest Pain
8	184
9	2/12/04 Progress Notes, Bates Stamp FMS9
10	290
11	5/30/11 Macon County General Hospital EKG with Dr. Sobel's Markings
12	300
13	304
14	304
15	360
16	Six Pages of Medical Records with Discharge Instructions
17	383
18	Compilation of Articles From Dr. Sobel's Testimony in Loyd Case
19	496
20	Copy of Dr. Sobel's Report
21	
22	
23	
24	
25	

I N D E X

2

PAGE

Examination by Mr. Jameson	6
Continued Examination by Mr. Jameson	181
Continued Examination by Mr. Jameson	336
Examination by Ms. Brown	396
Further Examination by Mr. Jameson	493

E X H I B I T S

PAGE

70	14
71	15
72	37
73	51
74	61
75	65
76	66
77	69
78	73
EXHIBITS CONTINUED ON PAGE #	

4

The videotaped deposition of RICHARD M. SOBEL, M.D., taken pursuant to notice for all purposes, at the Wingate Inn, 7882 Senoia Road, Fairburn, Georgia, September 25, 2013, at 9:51 a.m., at the instance of the Defendants, pursuant to the Federal Rules of Civil Procedure.

All formalities as to caption, notice, statement of appearance, et cetera, are waived. Reading and signing of the deposition transcript by the deponent is not waived. All objections except as to the form of the question are reserved for the hearing.

A P P E A R A N C E S

For the Plaintiff:

D. Bruce Kehoe, Esquire
Wilson, Kehoe, Winingham, LLC
2859 Meridian Street
Indianapolis, IN 46208

For Defendant Ilia:

Michael F. Jameson, Esquire
Brent A. Kinney, Esquire
North, Pursell & Ramos
1850 Bank of America Plaza
414 Union Street
Nashville, TN 37219

APPEARANCES CONTINUED ON PAGE 5

1 doesn't answer the question, so I have to repeat it, 276
 2 which is why we're here so late, Dr. Sobel.
 3 A. I don't think so.
 4 Q. So let me repeat the question.
 5 Is it your opinion in this case that the EKG
 6 machine used on May 30th, 2011, was an old EKG machine?
 7 A. Now, Counselor, you just repeated the very
 8 same question you just asked me a minute ago, and you've
 9 charged me with keeping us late. Now, that makes no
 10 apparent sense when --
 11 Q. What's your answer?
 12 A. I already said no.
 13 Q. You said, "I wouldn't be surprised."
 14 A. And then you asked me that very same question,
 15 and I said no.
 16 Q. Okay. So it's not your opinion that it was
 17 old?
 18 A. I wouldn't be surprised, but not a degree of
 19 medical certainty.
 20 You asked me two questions. Was it my opinion
 21 to a reasonable degree of medical certainty. I told you
 22 no.
 23 Q. You told me you wouldn't be surprised.
 24 A. No. You asked me the question after I said I
 25 wouldn't be surprised. I told you no.

04:46:19 1 millimeter or whether the machine was unable to read 278
 04:46:22 2 them because of motion or various other factors, I don't
 04:46:25 3 know.
 04:46:25 4 Q. And who sets the algorithms?
 04:46:27 5 A. Who loads the algorithms?
 04:46:29 6 Q. Yeah.
 04:46:34 7 A. The manufacturer.
 04:46:37 8 Q. So when those showed up at Macon County
 04:46:40 9 General Hospital, their technicians don't open up the
 04:46:43 10 EKG machine and adjust or tweak the algorithm settings?
 04:46:45 11 A. That is correct.
 04:46:46 12 Q. All right. Do you know if this EKG computer
 04:46:47 13 algorithm had ST depression within its reporting
 04:46:50 14 vocabulary?
 04:46:51 15 A. I'm sure it did, within reasonable medical
 04:46:53 16 certainty if that's helpful.
 04:46:55 17 Q. What are you normally looking for to detect a
 04:46:55 18 lack of good blood flow to the heart on an EKG?
 04:46:58 19 A. A lack of good blood flow to the heart. Wow.
 04:47:01 20 That's not a term of art we use.
 04:47:03 21 Q. And I took that question --
 04:47:05 22 A. A lack of good --
 04:47:06 23 Q. -- just so you know, from a question that
 04:47:08 24 Dr. Ilia was asked in his deposition.
 04:47:09 25 A. Well, a lack of good blood flow to the heart

04:48:13
 04:48:17
 04:48:21
 04:48:22
 04:48:25
 04:48:28
 04:48:29
 04:48:32
 04:48:35
 04:48:40
 04:48:40
 04:48:46
 04:48:49
 04:48:51
 04:48:53
 04:48:55
 04:48:57
 04:49:03
 04:49:09
 04:49:13
 04:49:14
 04:49:14
 04:49:17
 04:49:20

1 Q. All right.
 2 A. You asked me the question again, and I said I
 3 wouldn't be -- I said no. No, it isn't my opinion to a
 4 reasonable degree of medical certainty. I don't have
 5 the date of the machine. How could I say?
 6 I wouldn't be surprised. I've worked at these
 7 hospitals. They don't tend to have the most up-to-date
 8 equipment.
 9 Q. But that statement suggests to me that you're
 10 suggesting that this was not an up-to-date piece of
 11 equipment. Is that your testimony in this case?
 12 A. I don't know.
 13 Q. Great. Did this EKG computer have sensitive
 14 algorithms to detect ST depressions, or do you know?
 15 A. I don't know what you mean by "sensitive."
 16 Q. Did it have an algorithm to detect ST
 17 depressions of any degree?
 18 A. No, not of any degree. I don't think so. No.
 19 Q. Okay. What is your basis for that testimony?
 20 A. Well, it missed it.
 21 Q. Okay.
 22 A. There are ST depressions that are quite clear
 23 that are near a millimeter, so you would presume that
 24 the machine was set at greater than a millimeter. Now,
 25 how much greater than a millimeter or equal to a

277
 04:47:12 1 would generally indicate a shock state. That's
 04:47:12 2 generally not specifically diagnosed
 04:47:14 3 electrocardiographically, but it can be. I think you're
 04:47:18 4 looking at -- for a different question.
 04:47:20 5 Q. I'm repeating a question that was asked by
 04:47:23 6 plaintiff's counsel to Dr. Ilia.
 04:47:25 7 A. I don't know what the question means, a lack
 04:47:27 8 of good blood flow. You'd have to ask me a -- I could
 04:47:29 9 try to answer the question as I did already, or I can
 04:47:33 10 speculate as to what Mr. Kehoe was thinking.
 04:47:35 11 Q. All right. So how would you answer the
 04:47:39 12 question if you were going to try to answer the
 04:47:39 13 question?
 04:47:43 14 A. Well, again, a lack of good blood flow to the
 04:47:49 15 heart would mean a shock state, so you would typically
 04:47:50 16 not diagnose that on an EKG per se.
 04:47:54 17 But I believe he was probably asking about
 04:47:55 18 electrocardiographic signs of ischemia, and that is
 04:47:57 19 broken down into findings that are diagnostic of a
 04:48:00 20 STEMI, findings that are diagnostic of ischemia,
 04:48:01 21 findings that are consistent with ischemia, findings
 04:48:02 22 that are nonspecific, and then a normal EKG. So the EKG
 04:48:05 23 is stratified into those groups, generally speaking.
 04:48:07 24 There may be some overlap between non -- between
 04:48:11 25 nonspecific and consistent with ischemia, and you may

04:49:23
 04:49:26
 04:49:30
 04:49:36
 04:49:39
 04:49:42
 04:49:46
 04:49:48
 04:49:53
 04:49:56
 04:50:00
 04:50:02
 04:50:04
 04:50:05
 04:50:09
 04:50:13
 04:50:17
 04:50:23
 04:50:32
 04:50:35
 04:50:39
 04:50:44
 04:50:49
 04:50:53

1 A. They failed. 467
 2 Q. And is that what we talked about, Number 7
 3 above?
 4 A. Correct.
 5 Q. Have we covered that, all of your opinions
 6 with regard to that area?
 7 A. Yes.
 8 Q. Would you agree that in medicine there are
 9 legitimate differences of opinion about the standard of
 10 care?
 11 A. In general, the standard of care is a
 12 consensus, so not routinely so. I mean, you --
 13 certainly in a tort situation you find experts that have
 14 diametrically opposed opinions. But in my opinion, the
 15 defense experts in this case can be easily refuted.
 16 Q. Well, in general, are you telling me that
 17 there are -- there are no legitimate differences of
 18 opinion about the standard of care in a case?
 19 A. Not routinely. The standard of care is
 20 generally a consensus --
 21 Q. Okay.
 22 A. -- based on literature, based on experience,
 23 based on local factors, so -- but whether or not experts
 24 disagree, that's a different question.
 25 Q. Isn't it true that there may be more than one

469
 05:53:10 1 already. But we could review it if you like, but don't
 05:53:10 2 blame me for being -- prolonging the deposition.
 05:53:15 3 Q. Do you have an opinion with regard to the EKG
 05:53:15 4 program?
 05:53:16 5 A. All of the ones I've previously given.
 05:53:18 6 Q. That it was inadequate?
 05:53:20 7 A. Well, yes. It was inadequate to diagnose the
 05:53:34 8 electrocardiographic repolarization abnormalities that
 05:53:36 9 were consistent with ischemia, yes.
 05:53:38 10 MR. KEHOE: You know she's taking up all your
 05:53:41 11 time. We're going into all of these new opinions now.
 05:53:44 12 Is that -- is that what we're doing?
 05:53:50 13 Q. (By Ms. Brown) Did you review Dr. Jones's
 05:53:56 14 report?
 05:54:07 15 A. I did.
 05:54:11 16 Q. Okay. Do you disagree with any of his
 05:54:13 17 opinions with respect to the hospital and the nursing
 05:54:16 18 staff?
 05:54:21 19 A. His report gave me a lot of pause. I would
 05:54:23 20 have to pull it out to get more specific. I could say
 05:54:25 21 by and large I almost uniformly agreed with each and
 05:54:25 22 every one of his conclusions except perhaps --
 05:54:28 23 Q. You agreed?
 05:54:33 24 A. Disagreed with his conclusions except perhaps
 05:54:37 25 some of the things that he mentioned with respect to the

05:56:03
 05:56:08
 05:56:21
 05:56:24
 05:56:26
 05:56:30
 05:56:32
 05:56:36
 05:56:43
 05:57:02
 05:57:04
 05:57:07
 05:57:09
 05:57:12
 05:57:12
 05:57:15
 05:57:17
 05:57:18
 05:57:20
 05:57:24
 05:57:30
 05:57:31
 05:57:33
 05:57:36

468
 1 acceptable way to treat a patient medically?
 2 A. Oh, sure. That's a different situation and a
 3 different question.
 4 Q. And would you agree with me that nurses and
 5 hospital personnel have to use their own medical
 6 judgment in determining the appropriate care for a
 7 patient?
 8 A. Of course they use medical judgment. It's one
 9 of the variables. Obviously, it's just one of the
 10 factors.
 11 Q. Do you have an opinion as to whether the
 12 triage portion of her care was properly done?
 13 A. Yes.
 14 Q. Okay. And what's your opinion?
 15 A. She obviously should have been put on a chest
 16 pain pathway, and her acuity level was a two rather than
 17 a three.
 18 Q. You testified the other day about the EKG
 19 program, and you're not offering any opinions with
 20 regard to the EKG -- EKG program --
 21 A. Any new opinions?
 22 Q. -- are you?
 23 Well, as to whether it was adequate or
 24 inadequate?
 25 A. I want to say that we discussed that in detail

470
 05:54:40 1 prehospital care.
 05:54:43 2 Q. Well, would you mind pulling out Dr. Jones's
 05:54:45 3 report and tell me what you agree with? Would that be
 05:54:46 4 quicker?
 05:54:48 5 A. I don't know. It's probably not going to be
 05:54:51 6 quick either way. Okay. It's a fairly lengthy report.
 05:54:53 7 Okay. Well, to try to answer your question,
 05:54:54 8 I'd probably start from the back because I think that's
 05:54:57 9 where he talked about the prehospital care.
 05:55:00 10 THE WITNESS: I think we lost the air
 05:55:04 11 conditioning for a while again. Okay. The lights will
 05:55:06 12 be going out soon.
 05:55:12 13 A. All right. "There is conflicting testimony
 05:55:13 14 between the family members and documentation by the fire
 05:55:17 15 department," et cetera. "Family members state that they
 05:55:19 16 administered resuscitative measures. The EMT crew
 05:55:27 17 provided no resuscitative measures or that they did so
 05:55:35 18 inadequately and failed to document accurately."
 05:55:44 19 Q. (By Ms. Brown) Which page are you on?
 05:55:48 20 A. I -- this is nine.
 05:55:53 21 That is a fair, factual summary of the
 05:55:54 22 conflicting testimony and the issue regarding the
 05:55:57 23 failure of the EMT crew to apparently provide
 05:55:59 24 resuscitative measures on a timely basis. I do agree
 05:56:00 25 with that.

05:57:39
 05:57:41
 05:57:46
 05:57:48
 05:57:50
 05:57:53
 05:58:01
 05:58:03
 05:58:06
 05:58:11
 05:58:13
 05:58:21
 05:58:23
 05:58:29
 05:58:33
 05:58:37
 05:58:41
 05:58:44
 05:58:48
 05:58:50
 05:58:51
 05:58:56
 05:59:01
 05:59:07
 05:59:12

1 contained excerpts." 483
 2 THE COURT REPORTER: I'm sorry?
 3 THE WITNESS: I'm sorry. I'm trying to go
 4 fast.
 5 "ER charts customarily and appropriately
 6 contain excerpts from heart monitor strips." I agree.
 7 "Rather than the entirety of the strip." I agree.
 8 "Primarily because of record volume concerns." I agree.
 9 "Heart monitor machines are generally
 10 calibrated to print out any significant detected
 11 abnormality." I agree.
 12 (As read:) "The excerpts appearing in
 13 Mrs. Cherry's chart are typical and depict no rhythm
 14 abnormalities." Wow. Either he's looking at somebody
 15 else's record, or he's got heart rhythm strips that
 16 nobody else has. That's hard to fathom there. I don't
 17 know what he's looking at. He says there are excerpts.
 18 There are no excerpts. Correct me if I'm wrong.
 19 Okay. (As read:) "I disagree with any
 20 complaint that computerized reading of the EKG as
 21 'abnormal' was conclusive, diagnostic, or indicative of
 22 an acute coronary syndrome." Some of these things I
 23 actually agree with. This is an EKG which is consistent
 24 with ischemia, which is of concern for ischemia, but is
 25 not frankly diagnostic of ischemia. In other words,

06:17:19 1 things that the doctor doesn't see and vice versa.
 06:17:22 2 Okay. (As read:) "Computer EKG makes no
 06:17:22 3 reference to any ST depressions." That is true. I
 06:17:24 4 agree.
 06:17:25 5 (As read:) "It is not within the acceptable
 06:17:28 6 professional standard of care for ER physicians to
 06:17:32 7 accept automated interpretations as definitive or
 06:17:34 8 accurate." It depends what part of the automated
 06:17:39 9 interpretations. eAccess is very good [phonetic].
 06:17:40 10 It's better than a human. The voltage measurements, the
 06:17:44 11 interval measurements typically are very good, and
 06:17:47 12 they're typically better than the human eye. But when
 06:17:50 13 it comes to -- unless you use a magnifying glass,
 06:17:54 14 perhaps. But when it comes to repolarization
 06:17:59 15 abnormalities, EKG computer algorithms are not
 06:18:05 16 necessarily accurate. I do agree with that.
 06:18:09 17 Q. In the paragraph above that --
 06:18:12 18 THE WITNESS: Any chance of turning the air
 06:18:16 19 conditioner back on?
 06:18:26 20 Q. (By Ms. Brown) The paragraph above that,
 06:18:29 21 we've talked about the role of the nursing staff in --
 06:18:34 22 THE WITNESS: Thank you.
 06:18:37 23 Q. (By Ms. Brown) -- in interpreting the EKGs.
 06:18:41 24 And do you want to look through this real
 06:18:46 25 quickly, Doctor, and tell me if there's anything else

485 06:20:39
 06:20:43 06:20:52
 06:20:55 06:20:57
 06:21:01 06:21:03
 06:21:07 06:21:07
 06:21:11 06:21:11
 06:21:17 06:21:17
 06:21:22 06:21:22
 06:21:25 06:21:25
 06:21:28 06:21:28
 06:21:32 06:21:37
 06:21:37 06:21:42
 06:21:42 06:21:46
 06:21:53 06:21:56
 06:21:56 06:21:58
 06:21:59 06:21:59
 06:22:02 06:22:02
 06:22:03 06:22:03
 06:22:04 06:22:04
 06:22:08 06:22:08

484 1 there are -- to me, it's a 1-millimeter deflection of
 2 the ST which raises a lot of concerns. It's not .5, but
 3 then again, it's not 6 millimeters. This is not an EKG
 4 that is frankly and absolutely diagnostic of ischemia,
 5 but this is an EKG that certainly raises concern and may
 6 be consistent with ischemia. I think he's missing the
 7 point.
 8 Let's see. It certainly was abnormal. There
 9 was no question of that. So I disagree.
 10 (As read:) "Computerized EKGs are subject to a
 11 proprietary algorithm." I agree were that.
 12 "The GE Mac 1200," I don't have any reason to
 13 disagree with that. I don't know what year it was.
 14 "EKG's automated interpretation is typically
 15 dependent on the manufacturer's choice of algorithm."
 16 That's part of it. Also motion is another part of it,
 17 also voltage is another part of it, and she had
 18 relatively low voltage.
 19 (As read:) "The automated interpretation does
 20 not represent the recognized standard of acceptable
 21 practice." I agree that the -- simply the fact that the
 22 machine has detected an abnormality doesn't mean it's
 23 absolutely correct. The physician needs to review that
 24 and read the EKG appropriately. Sometimes the machine
 25 is right. Sometimes it's wrong. Sometimes it sees

06:18:52 1 that you agree with? That might be a little bit
 06:18:58 2 quicker.
 06:19:07 3 A. I don't know how else to do it except read it
 06:19:11 4 as fast as I can and tell you. That's what I've been
 06:19:14 5 doing. I don't know how else to do it. If you have
 06:19:18 6 another way, let me know.
 06:19:22 7 Q. Well, if you read it and tell us when you find
 06:19:24 8 a statement that you agree with?
 06:19:31 9 A. Oh, okay. You want me to just do it silently
 06:19:34 10 the way I -- instead of reading it out loud?
 06:19:38 11 Q. Yeah. That might go a little bit faster.
 06:19:44 12 A. All right. I doubt it, but okay.
 06:19:48 13 (As read:) "A completely normal EKG would be
 06:19:53 14 the exception to the rule for most 58-year-old
 06:19:57 15 patients." I don't terribly disagree with that. I'm
 06:20:01 16 not quite sure what he means by "exception rather than
 06:20:04 17 the rule," but yes, 58 years old, you -- and other ages
 06:20:08 18 you may see one abnormality or another. I don't
 06:20:11 19 disagree with that.
 06:20:14 20 "There are no acute findings," well -- I'm
 06:20:19 21 reading to myself.
 06:20:23 22 Serial EKGs were required.
 06:20:28 23 "I disagree with the contention that an EKG
 06:20:31 24 can rule out ischemia." I agree with that.
 06:20:36 25 "An EKG can only rule in ischemia, but not

486 06:22:11
 06:22:20 06:22:20
 06:22:23 06:22:23
 06:22:24 06:22:24
 06:22:27 06:22:27
 06:22:28 06:22:28
 06:22:30 06:22:30
 06:22:32 06:22:32
 06:22:33 06:22:33
 06:22:37 06:22:37
 06:22:40 06:22:40
 06:22:56 06:22:56
 06:22:57 06:22:57
 06:23:00 06:23:00
 06:23:04 06:23:04
 06:23:08 06:23:08
 06:23:13 06:23:13
 06:23:17 06:23:17
 06:23:26 06:23:26
 06:23:30 06:23:30
 06:23:39 06:23:39
 06:23:43 06:23:43
 06:23:45 06:23:45
 06:23:52 06:23:52